

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 44.12.101A, 44.12.102,)
44.12.103, 44.12.104, 44.12.105,)
44.12.106, 44.12.106A, 44.12.107,) NOTICE OF AMENDMENT
44.12.202, 44.12.203, 44.12.205,) AND ADOPTION
44.12.207, 44.12.209, 44.12.211,)
44.12.212, and the adoption of)
New Rules I and II, all related)
to lobbying and the regulation)
of lobbying)

TO: All Concerned Persons

1. On February 26, 2004, the Commissioner of Political Practices published MAR Notice No. 44-2-124 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules relating to lobbying and the regulation of lobbying, at page 463 of the 2004 Montana Administrative Register, issue number 4.

2. The Commissioner has adopted rules I (44.12.108) and II (44.12.217) and amended ARM 44.12.101A, 44.12.106, 44.12.106A, and 44.12.212 as proposed.

3. The Commissioner has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

44.12.102 LOBBYING--DEFINITIONS AND SCOPE--REPORTABLE ACTIVITIES For purposes of Title 5, chapter 7, MCA, and this chapter:

(1) remains as proposed.

(a) all direct or indirect payments of salaries, fees, wages, and benefits by a principal to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities to lobby or to support or assist a lobbying activity. The term includes, but is not limited to, all payments made to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities to lobby or to support or assist a lobbying activity for overtime, compensatory time, retirement, health insurance, membership fees for social, civic and professional organizations, life insurance, professional liability insurance, unemployment, worker's compensation, personal use of a vehicle, rental car payments, disability insurance, and other benefits; and

(b) the term "compensation" does not include personal living expenses of a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities that are reimbursed by a principal.

(2) remains as proposed.

~~(3) "Employed or retained individual" means an individual who is employed, paid, or retained by a principal to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature, but who is not required to obtain a lobbyist license because the individual does not receive payments from one or more persons that equal or exceed the amount specified in 5-7-112, MCA, in a calendar year.~~

~~(4)~~(3) "Lobbying" shall have the definition set forth in 5-7-102(11)(a), MCA. Unless otherwise exempted from the definition of "lobbying" by Title 5, chapter 7, MCA, or this chapter, lobbying shall include:

(a) any direct communication by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities with a public official to promote or oppose official action;

(b) all time spent by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities to present oral or written testimony to one or more public officials promoting or opposing official action by any public official or group of public officials, including the legislature or a committee of the legislature; or

(c) remains as proposed.

~~(5)~~(4) "Lobbying activity" or "lobbying activities" mean actions or efforts by a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist lobbying, including preparation and planning activities after a decision has been made to support or oppose official action, and research and other background work that is intended, at the time it is performed, for use in lobbying or to support or assist lobbying activities. The terms "lobbying activity" or "lobbying activities" do not include:

(a) through (g) remain as proposed.

~~(6)~~(5) "Lobbyist" shall have the definition set forth in 5-7-102(12), MCA. The term "lobbyist" does not include:

(a) through (d) remain as proposed.

~~(7)~~(6) "Major effort to support, oppose, or modify official action" in 5-7-208(5)(d), MCA, means any official action on which a principal's lobbyist, employee, officer, agent, attorney, or representative engages in direct communication with any public official on two or more occasions to support, oppose, or modify the official action.

~~(8)~~(7) "Official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority by the legislature or a member of the legislature concerning the introduction or enactment of legislation.

~~(9)~~(8) "Payment" shall have the definition set forth in 5-7-102(13), MCA. The term includes salary, fees, compensation, or anything of value to be paid to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities, pursuant to a contract, including payments to be made in the future, after services are rendered by the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities. The term does not include payments or

reimbursements for personal and necessary living expenses, but includes travel expenses if a principal is required to report payments pursuant to 5-7-208, MCA.

~~(10)~~(9) "Personal and necessary living expenses" means payments or reimbursement by a principal ~~for a lobbyist's or an employed or retained individual's~~ to a lobbyist or an individual engaged in lobbying activities for meals, food, lodging, or residential utilities.

~~(11)~~(10) "Principal" shall have the definition set forth in 5-7-102(15), MCA.

~~(12)~~(11) "Public official" shall have the definition set forth in 5-7-102~~(15)~~(16), MCA, and as specifically designated in ARM 44.12.106 and 44.12.106A.

~~(13)~~(12) "Travel expenses" means payments or reimbursement for transportation costs, including rental car payments.

AUTH: 5-7-111, MCA

IMP: 5-7-102, MCA

44.12.103 LOBBYISTS AND LOBBYING SUPPORT PERSONNEL--
REPORTING OF INFORMATION TO PRINCIPAL (1) It is the duty of each individual lobbyist or ~~employed or retained~~ individual whose activities are covered by Title 5, chapter 7, MCA, to maintain records relating to information required to be reported and exemptions claimed. Each individual lobbyist and ~~employed or retained~~ individual engaged in lobbying activities must timely transmit such information to the lobbyist's or individual's principal to allow timely reporting by the principal.

(2) Except as provided in (3), the records submitted to a principal by a lobbyist or an ~~employed or retained~~ individual who is paid to lobby or who is paid to support or assist a lobbying activity must, for each reporting period specified in 5-7-208, MCA:

(a) identify each calendar day on which the lobbyist or the ~~employed or retained~~ individual was paid to lobby or to support or assist a lobbying activity;

(b) indicate the reportable time spent by a lobbyist or an ~~employed or retained~~ individual lobbying or assisting or supporting a lobbying activity for each calendar day identified in (2)(a); and

(c) identify each official action on which the lobbyist or the ~~employed or retained~~ individual lobbied or supported or assisted a lobbying activity during the reporting period. The official action identified under this subsection must include sufficient detail to enable a principal to file a report required by 5-7-208(5)(d), MCA, and ARM 44.12.202. The following are examples of official action descriptions that satisfy the requirements of this subsection:

(i) and (ii) remain as proposed.

(3) The daily itemization requirements of (2)(a) and (b) do not apply to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities if all compensation

and reimbursement paid by a principal will be reported as provided in ARM 44.12.203(1)(a), 44.12.205(1) and (2), 44.12.207(2)(a), or 44.12.211(1)(a).

AUTH: 5-7-111, MCA
IMP: 5-7-208 and 5-7-212, MCA

44.12.104 PERSONAL LIVING EXPENSES--LIMITATIONS AND RECORDS (1) The exemption from reporting personal living expenses in 5-7-102(13)(b)(i), MCA, is limited to actual and necessary personal living expenses incurred by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities.

(2) All personal living expenses claimed by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities and reimbursed by a principal must be supported by a written receipt from the third party payee, except that a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities may be reimbursed by a principal in an amount not to exceed \$10 per day for incidental personal living expenses without a receipt from third party payees.

(3) If a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities received payments for personal living expenses from more than one principal, the total payments ~~for made to~~ the lobbyist~~s~~ or the ~~employed or retained~~ individual~~s~~ engaged in lobbying activities for personal living expenses may not exceed 100% of the actual and necessary personal living expenses incurred by the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities.

(4) Each principal making payments for the personal living expenses of a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities may only withhold from reporting the principal's proportional share of the ~~lobbyist's or the employed or retained individual's~~ personal living expenses paid by the principal to the lobbyist or the individual engaged in lobbying activities.

(5) A lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities receiving payments for personal living expenses from more than one principal is responsible for reporting to each principal the total personal living expenses incurred by the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities in each reporting period and the proportional amount of personal living expenses that each principal is obligated to pay. For example, Lobbyist J incurs \$6,000 of personal living expenses in a legislative year. Lobbyist J is reimbursed for personal living expenses by four different principals and the four principals are responsible for paying the following proportional amounts: Principal T (50%); Principal X (20%); Principal Y (20%); and Principal Z (10%). The four principals are exempt from reporting the following payments to Lobbyist J for personal living expenses:

- (a) Principal T (50%), \$3,000;
- (b) Principal X (20%), \$1,200;
- (c) Principal Y (20%), \$1,200; and
- (d) Principal Z (10%), \$600.

AUTH: 5-7-102 and 5-7-111, MCA
IMP: 5-7-102, MCA

44.12.105 STATE GOVERNMENT AGENCIES--LOBBYING--
DEFINITIONS AND REPORTING (1) through (2)(a) remain as
proposed.

(b) each agency of state government and each office of a public official must file reports under Title 5, chapter 7, MCA, and these rules concerning the activities of their lobbyists or their ~~employed or retained~~ individuals who lobby or support or assist a lobbying activity. State agencies and the offices of elected or appointed public officials shall file consolidated lobbying reports covering the lobbying activities of all lobbyists or ~~employed or retained~~ individuals engaged in lobbying activities as follows:

(i) The offices of an elected or appointed public official shall file a consolidated lobbying report covering the lobbying activities of all lobbyists or ~~employed or retained~~ individuals who lobby or assist or support a lobbying activity. If an elected public official is a member of a multi-member tribunal (e.g., the Montana supreme court) or a board or commission (e.g., the Montana public service commission), the tribunal, board, or commission shall file a consolidated report including the lobbying activities of the lobbyists or the ~~employed or retained~~ individuals engaged in lobbying activities for each elected public official who is a member of the tribunal, board, or commission.

(ii) A state agency shall file a consolidated lobbying report covering the lobbying activities of all its lobbyists or ~~employed or retained~~ individuals who lobby or support or assist a lobbying activity. However, a state agency may elect not to file a report concerning lobbying activities by boards, commissions, or entities that are attached for administrative purposes only as defined in 2-15-121, MCA, or that have otherwise been granted autonomy to act under Montana law. If an agency elects not to include in its lobbying report the lobbying activities of any boards, commissions, or entities that are attached for administrative purposes only or entities that exercise autonomous powers, the agency shall specifically identify the boards, commissions, or entities not included in the state agency's lobbying report.

AUTH: 5-7-111, MCA
IMP: 5-7-111, 5-7-208, and 5-7-211, MCA

44.12.107 LOCAL GOVERNMENT LOBBYING--DEFINITIONS AND
REPORTING (1) through (1)(e) remain as proposed.

(2) Except as provided in (1) and unless otherwise exempted by Title 5, chapter 7, MCA, or other provisions of this chapter:

(a) remains as proposed.

(b) each local government entity must file reports under Title 5, chapter 7, MCA, and this chapter concerning the activities of their lobbyists or their ~~employed or retained~~ individuals who lobby or support or assist a lobbying activity. Local government entities shall file consolidated lobbying reports covering the lobbying activities of all employees, officers, attorneys, and agents.

AUTH: 5-7-111, MCA

IMP: 5-7-102, 5-7-111, 5-7-208, and 5-7-211, MCA

44.12.202 PRINCIPALS--REPORTS--MAINTENANCE OF RECORDS

(1) Pursuant to 5-7-208, MCA, a principal who makes payments that exceed the amount specified in 5-7-112, MCA, to one or more lobbyists or ~~employed or retained~~ individuals engaged in lobbying activities during a calendar year shall report all payments made to each lobbyist or ~~employed or retained~~ individual for lobbying or to support or assist a lobbying activity- as follows:

(a) To determine whether a principal has made payments exceeding the threshold amount in 5-7-112, MCA, during a calendar year, the principal must include all payments made to lobbyists and to individuals engaged in lobbying activities, excluding payments or reimbursements for personal and necessary living and travel expenses.

(b) If a principal does not make payments that exceed the threshold amount in 5-7-112, MCA, to one or more lobbyists or individuals engaged in lobbying activities during a calendar year as provided in (1)(a), then the principal does not have to report any payments made.

(c) If a principal makes payments that exceed the threshold amount in 5-7-112, MCA, to one or more lobbyists or individuals engaged in lobbying activities during a calendar year as provided in (1)(a), then all payments (excluding personal and necessary living expenses) made to a lobbyist or an individual engaged in lobbying activities, including those payments excluded in determining whether the amount in 5-7-112, MCA, was exceeded by the principal, must be reported under 5-7-208, MCA, and these rules. Although travel expenses paid to a lobbyist or an individual engaged in lobbying activities are excluded from the threshold payment determination under (1)(a), all payments or reimbursements for travel expenses to a lobbyist or an individual engaged in lobbying activities, including travel expense payments excluded from the determination of whether the amount in 5-7-112, MCA, was exceeded by the principal, must be reported under 5-7-208, MCA, and ARM 44.12.205(5) once payments to a lobbyist or for lobbying activities exceed the threshold amount for a calendar year as provided in 5-7-112, MCA.

~~(2) Unless exempted by Title 5, chapter 7, MCA, or this chapter, reports shall include, without limitation, all payments made to a lobbyist or an employed or retained individual engaged in lobbying activities to influence official action, including payments made to support or assist any lobbying activity.~~

~~(3)~~(2) Even if a principal declares that it made no payments for lobbying activities during a reporting period, a principal subject to the reporting requirements of 5-7-208, MCA, must file a lobbying report as provided in 5-7-208(4), MCA.

~~(4)~~(3) Principals must report each official action on which the principal's lobbyists or ~~employed or retained~~ individuals engaged in lobbying activities exerted a major effort to support, oppose, or modify official action, together with a statement of the principal's position supporting or opposing the official action (5-7-208(5)(d), MCA).

~~(5)~~(4) Principals must identify each official action reportable under 5-7-208(5)(d), MCA, by using descriptive phrases, legislative bill draft request numbers, or legislative bill or resolution numbers as provided in ARM 44.12.103(2)(c).

~~(6)~~(5) A principal must retain all records supporting the reports filed under Title 5, chapter 7, MCA, for three years from the date of filing as required by 5-7-212, MCA.

AUTH: 5-7-111, MCA
IMP: 5-7-208, MCA

44.12.203 PRINCIPALS--REPORTING OF COMPENSATION PAID TO LOBBYISTS (1) through (1)(a) remain as proposed.

(b) If the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is a salaried employee or officer of the principal, and his duties include lobbying or support or assistance for lobbying activities, the compensation may be allocated and reported on a daily basis or on an hourly basis based on the amount of time the lobbyist or the ~~employed or retained~~ individual is engaged in lobbying or in supporting or assisting lobbying activities.

(c) through (c)(ii) remain as proposed.

(2) In calculating and reporting compensation paid to a lobbyist or an individual for lobbying or to support or assist lobbying activities as provided in (1)(b) and (c), a fraction of an hour for each day that a lobbyist or an ~~employed or retained~~ individual lobbies or supports or assists lobbying activities shall be rounded up to the nearest quarter of an hour and so reported. For example, Lobbyist A reports to Principal White Hat that she spent the following time lobbying or assisting or supporting lobbying activities for the February 15 reporting period in a legislative year:

DATE	HOURS
1/12	3.2
1/13	4.8

1/16	2.1
1/28	1.3
Total	11.4

Principal White Hat must, for each of the four days Lobbyist A engaged in lobbying or supported or assisted a lobbying activity, calculate and report Lobbyist A's time as follows:

DATE	HOURS
1/12	3.2 is reported as 3.25
1/13	4.8 is reported as 5.00
1/16	2.1 is reported as 2.25
1/28	1.3 is reported as 1.50
Total	11.4 is reported as 12.00

Principal White Hat must report 12 hours (not 11.4 hours) of time for Lobbyist A at the hourly compensation paid to Lobbyist A in the February 15 lobbying report.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208, MCA

44.12.205 PRINCIPALS--REPORTING OF REIMBURSED EXPENSES OF LOBBYISTS (1) If a principal reimburses a lobbyist or an ~~employed or retained~~ individual for actual expenses incurred for lobbying or to support or assist a lobbying activity (excluding personal and necessary living expenses), the actual reimbursed expenses must be reported.

(2) If the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is being paid a periodic, lump sum, or contingent fee and the primary purpose of the contract is for lobbying services, all reimbursed expenses (excluding personal and necessary living expenses) shall be reported.

(3) If the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is being paid a fee and lobbying services are a part of the contract, only those expenses or the portion of them that are related to or incurred in lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported (excluding personal and necessary living expenses).

(4) If the expenses are incurred by a salaried employee or officer of the principal whose duties include lobbying, only those reimbursed expenses (excluding personal and necessary living expenses) or the proportion of them that are related to or incurred in lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported.

(5) Travel expenses of a lobbyist or an individual engaged in lobbying activities that are paid or reimbursed by a principal shall not be included by the principal in calculating whether the threshold amount in 5-7-112, MCA, has been exceeded by the principal. However, once a principal has made payments exceeding the amount in 5-7-112, MCA, all travel

expenses of a lobbyist or an individual engaged in lobbying activities that were paid or reimbursed by a principal (including those excluded in determining whether the amount in 5-7-112, MCA, was exceeded by the principal) shall be reported by the principal.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208, MCA

44.12.207 PRINCIPALS--REPORTING OF OFFICE AND MISCELLANEOUS EXPENSES (1) Principals shall report payments to influence official action, including payments to a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist a lobbying activity, for each expense category in 5-8-208(5)(a), MCA.

(2) If a principal provides at the principal's expense office space, utilities, supplies, and equipment to a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist a lobbying activity, the principal shall report the cost of providing such office space, utilities, supplies, and equipment as follows:

(a) If the actual cost of providing office space, utilities, supplies, and equipment can be determined and the actual cost is less than \$5,000 for a reporting period, then actual cost may be reported. In the alternative, a principal may report that office space, utilities, supplies, and equipment were provided to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities during the reporting period and the cost of providing such office space, utilities, supplies, and equipment was:

(i) and (ii) remain as proposed.

(b) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities during a reporting period is \$5,000 or more, then the actual cost must be determined and provided.

(c) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities is reported as provided in ~~ARM 44.12.207~~(2)(a)(i) or (ii), the principal must make a good faith determination of such expenses and retain all calculations and records relied on as provided in ARM 44.12.202. If the actual cost of providing office space, utilities, supplies, and equipment can be determined but is not reported as provided in ~~ARM 44.12.207~~(2)(a)(i) and (ii), the actual cost determination must be retained as a record under ARM 44.12.202.

(3) Nothing in this rule requires a principal to report the cost of office space, utilities, supplies, and equipment for a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities if the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is responsible for paying the cost of the lobbyist's or ~~employed or retained individual's~~ office space, supplies, equipment,

and utilities out of the amount paid to the lobbyist or ~~employed or retained~~ individual engaged in lobbying activities. If, however, the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is reimbursed by the principal for any office space, supplies, support personnel, equipment, or utility costs incurred as part of a lobbying activity, the amount of such reimbursement must be reported.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208, MCA

44.12.209 PRINCIPALS--REPORTING OF COSTS OF ENTERTAINMENT AND SOCIAL EVENTS (1) remains as proposed.

(a) if one or more public officials are invited and attend the event, all payments made by the principal, the lobbyist, or an ~~employed or retained~~ individual engaged in lobbying activities for the benefit of the public officials who attend the event, including tips or gratuities, must be reported as a lobbying expenditure and, if applicable, itemized as provided in 5-7-208(5)(b), MCA, if:

(i) a principal's lobbyist, employee, officer, agent, attorney, or ~~employed or retained~~ individual engaged in lobbying activities lobbies a public official during the event;

(ii) remains as proposed.

(iii) the event is paid for at the request or suggestion of a lobbyist or an ~~employed or retained~~ individual for the purpose of supporting or assisting a lobbying activity.

(2) through (2)(b) remain as proposed.

AUTH: 5-7-111, MCA
IMP: 5-7-208, MCA

44.12.211 ALLOCATION OF TIME AND COSTS--ALTERNATIVE REPORTING METHOD (1) A principal may use the following alternatives to report payments made to a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist a lobbying activity:

(a) if most or all of ~~a lobbyist's~~ the time spent by a lobbyist or an ~~employed or retained individual's~~ time during a reporting period is devoted to lobbying or supporting or assisting lobbying activities, the total sum of all compensation paid to ~~him~~ the person during the period may be reported as lobbying payments;

(b) if less than all of ~~the time spent by a lobbyist a lobbyist's~~ the time spent by a lobbyist or an ~~employed or retained individual's~~ time is devoted to lobbying or supporting or assisting lobbying activities, then the sum reportable may be calculated as the proportion of the total compensation paid that equals the proportion of the total hours or days spent lobbying or supporting or assisting lobbying activities during the reporting period. For example, if a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities is paid

\$500 per week and spends the equivalent of two days lobbying or supporting or assisting lobbying activities, then \$200 may be reported by his principal as lobbying payments; and

(c) office space, utilities, supplies, equipment, and salary payments made to support or assist a lobbyist or an ~~employed or retained~~ individual engaged in lobbying or a lobbying activity may be reported as a proportion of total expenses for the reporting period. If it can be reasonably determined that a given proportion of total expenses during a period were related to lobbying or supporting or assisting lobbying activities, a principal may report the proportion of total expenses for the period that equals the proportion of time and budget spent on lobbying or supporting or assisting lobbying activities.

(2) remains as proposed.

AUTH: 5-7-111, MCA

IMP: 5-7-111 and 5-7-208, MCA

4. The Commissioner has thoroughly considered all commentary received. The comments received and the Commissioner's response to each follow:

COMMENT 1: The definition of the term "compensation" in the proposed rules is too broad, and is not authorized by the statutes governing lobbying.

RESPONSE: The definition of the term "compensation" was adopted in a previous rulemaking proceeding. The Commissioner does not agree that the definition is too broad or that it is not authorized by the statutes. The definition was drafted based on existing law in Montana Code Annotated 5-7-102(13)(a)(ii), which broadly defines the term "payment" as including a "distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value . . . directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses" The Commissioner believes that a comprehensive definition of the term "compensation" provides necessary guidance and clarity regarding payments that must be reported by a principal.

COMMENT 2: The definition of the term "compensation" may require disclosure of employee benefit information, which is an invasion of privacy.

RESPONSE: The Commissioner disagrees with this comment. A principal is not required to publicly disclose employee benefit information when reporting payments to lobbyists or those supporting or assisting lobbying activities. A principal is required to calculate an internal amount that accurately represents "payments" made to those engaged in lobbying activities, and report that amount.

COMMENT 3: The phrase "employed or retained individual" is an attempt to revise the statutory definition of the term "lobbyist." The phrase is not authorized by the statutes, it adds unwarranted reporting requirements for principals, and it causes confusion regarding what payments must be reported by principals. In addition, the definition of the phrase is unclear.

RESPONSE: The Commissioner agrees that the inclusion of the phrase "employed or retained individual" in the rules has resulted in some confusion and questions. The phrase has been deleted and replaced with language that clarifies that payments to lobbyists and to those who engage in lobbying activities must be reported by principals who are subject to reporting requirements pursuant to Montana Code Annotated 5-7-208.

COMMENT 4: Under the statutes, a principal is only required to keep track of and report payments made to lobbyists. Payments to others who may be engaged in lobbying activities but who are not, by definition, lobbyists, are not required to be reported. Therefore, to the extent that the proposed rules seek to require reporting of such payments, the rules are invalid.

RESPONSE: The Commissioner disagrees with this comment, for the following reasons. "Lobbying" is defined in the statutes as "the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature." Montana Code Annotated 5-7-102(11)(a)(i). Montana Code Annotated 5-7-208 requires principals to report "payments made for the purpose of lobbying" if their aggregate payments exceed the threshold amount in Montana Code Annotated 5-7-112. The definition of the term "payment" includes a distribution, transfer, etc. of money or anything of value "in support of or for assistance to a lobbyist or a lobbying activity" Montana Code Annotated 5-7-102(13)(a)(iii) (emphasis added). These statutes reflect a clear legislative intent that payments made to those other than registered lobbyists, for lobbying activities, must be reported by principals whose payments exceed the threshold amount in Montana Code Annotated 5-7-112.

COMMENT 5: The rules as proposed improperly seek to require principals to report all payments made for the purpose of lobbying if aggregate payments by principals to either lobbyists or those engaged in lobbying activities exceed the threshold amount in Montana Code Annotated 5-7-112. Under the law, payments need only be reported if a principal makes payments exceeding the statutory threshold amount to one or more lobbyists.

RESPONSE: The Commissioner disagrees with the interpretation of the law reflected in this comment. The definition of the

term "lobbying" includes "promoting or opposing the introduction or enactment of legislation." Montana Code Annotated 5-7-102(11)(a)(i). Nothing in the definition indicates that attempts to influence the legislature are limited to contacts by individuals required to register as lobbyists (individuals who receive payments of \$2,150 or more from one or more principals). Further, as noted in response to Comment 4, the definition of the term "payment" includes payment of anything of value "in support of or for assistance to a lobbyist or a lobbying activity" Montana Code Annotated 5-7-102(13)(a)(iii). Read together, these statutory provisions clearly recognize that lobbying and lobbying activities can be conducted by individuals who are paid less than \$2,150 to influence official action on behalf of a principal. Moreover, the hearing on these proposed rules had the benefit of the testimony of Representative Alan Olson. Rep. Olson was the primary sponsor of House Bill 689, which enacted the major revisions to the lobbying laws that these rules are intended to implement. Rep. Olson submitted written and oral testimony clearly indicating that the statutory threshold amount that triggers reporting requirements (currently \$2,150) can be met whether the payee is an individual or a licensed lobbyist. During his oral testimony, Rep. Olson stated:

And any person who pays more than \$2,150, excluding travel expenses, to one or more persons is a principal and subject to statutory reporting requirements. . . . The \$2,150 trigger, it is a cumulative effect. That was the legislative intent on this. If a principal hires ten people at \$500 the principal has to report it . . . that meets the trigger. That was the intent behind it. (Emphasis added).

COMMENT 6: Several comments posed the question whether travel expenses are counted in determining whether a principal has made payments exceeding the payment threshold amount.

RESPONSE: The Commissioner has added rule provisions clarifying that travel expenses paid or reimbursed by a principal are not included in calculating whether the principal has exceeded the threshold amount. However, once the principal has made payments exceeding the threshold amount (excluding travel expenses), then all payments must be reported, including the travel expense payments that were previously excluded.

COMMENT 7: Under the proposed rule amendments, if individual employees of a business or members of an organization appear and testify on their own, not using resources of the business or organization, and they are not paid or reimbursed by the business or organization to engage in those activities, does

the business or organization have to report the expenses associated with those activities?

RESPONSE: As long as an individual employee or member is acting on his or her own, using his or her own resources, and is not being paid or reimbursed by the business or organization to engage in those activities, then the business or organization does not have to report anything. The employee's or member's activities would fall within the exemption in Montana Code Annotated 5-7-102(12)(b)(i), for "an individual acting solely on the individual's own behalf."

COMMENT 8: Under the proposed rule amendments, if individual employees of a business or members of an organization contact legislators or otherwise engage in lobbying activities using the resources of the business or organization, but without the knowledge or consent of the business or organization, does the business or organization have to report the expenses associated with those activities?

RESPONSE: If the business or organization does not pay the employee or member to contact the legislator or to engage in other lobbying activities, then the business or organization has no reporting responsibilities.

COMMENT 9: The proposed rule amendments are confusing, lack clarity, and do not provide sufficient guidance regarding payments that must be reported by principals.

RESPONSE: The Montana Lobbyist Disclosure Act (the Act) requires disclosure of amounts of money spent for lobbying. Montana Code Annotated 5-7-101(1). Montana Code Annotated 5-7-111 requires that rules implementing the Act "be designed to effect and promote the purposes of [the Montana Lobbyist Disclosure Act], express or implied." As noted in response to a previous comment, HB 689 enacted significant changes to the Act. The Commissioner believes that the new and amended rules are as simple and workable as possible, given the complexity of the laws and the requirement that the rules effectuate the purposes of the existing laws.

COMMENT 10: The rules refer to "public officials" even though the Commissioner has stated the rules will not be applied to non-legislative lobbying activities.

RESPONSE: The rules refer to "public officials" because the term "public official" is defined in Montana Code Annotated 5-7-102(16). A prior rulemaking proceeding adopted rules providing guidance and clarity regarding which officials are considered elected and appointed public officials. Legislative amendments in 2003 required that this rulemaking proceeding include slight revisions to those rules (ARM 44.12.106 and 44.12.106A). Moreover, legislators are included in the list of elected public officials in ARM 44.12.106,

therefore it is appropriate to include references to public officials in rules that will be applied to legislative lobbying. The Preamble and Statement of Applicability in ARM 44.12.101A make it clear that until the non-legislative lobbying provisions of the Act are revised, either legislatively or through court decisions, the rules will not be applied to non-legislative lobbying activities.

By: /s/ Linda L. Vaughey
LINDA L. VAUGHEY
Commissioner

By: /s/ Jim Scheier
JIM SCHEIER
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State August 9, 2004.